

Thangamani Vs. State of Kerala

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Court : Kerala

Decided On : Jul-21-2005

Reported in : II(2006)DMC222; 2006(1)KLT110

Judge : K. Hema, J.

Acts : [Indian Penal Code \(IPC\), 1860](#) - Sections 34, 198, 198(1), 198(2), 494, 495, 497 and 498; Code of Criminal Procedure (CrPC) ; Code of Criminal Procedure (CrPC) (Amendment) Act, 1978

Appeal No. : Crl. M.C. No. 8984 of 2002

Appellant : Thangamani

Respondent : State of Kerala

Advocate for Def. : D. Sajeev and; Ligeey Antony, Advs. and; Thavamony, P

Advocate for Pet/Ap. : P. Vijayabhanu,; Alan Pappaly and; P. Maya, Advs.

Disposition : Petition dismissed

Judgement :

ORDER

K. Hema, J.

1. Does a son require any written authorisation from his mother to prosecute his father and second wife for bigamy under Section 494 of Indian Penal Code (IPC, for short)? Is it necessary that a complaint filed by the son should reflect that the complaint is filed 'on behalf of the mother? These are the main questions which arise for consideration in this case.

2. The second respondent herein filed a private complaint before the Magistrate's court against the father and his second wife. The offence alleged is under Sections 494 and 34 of Indian Penal Code (IPC, for short). As per allegations in the complaint, complainant's father who is arrayed as first accused married his mother in accordance with the religious rites and two children were also born in the wed-lock. But, while the marriage was subsisting, his father married the petitioner herein. The complainant came to know about the second marriage only when divorce proceedings were initiated by his father against the mother and when he made certain enquiries in connection with the same. The complainant, being aggrieved by the second marriage of his father filed the complaint.

3. Petitioner-second wife seeks to quash the proceedings initiated against her mainly on the ground that the second respondent, being the son, has no locus standi to file a complaint against her for offence under Section 494 IPC. Sri. Alan Pappaly, learned Counsel appearing for petitioner strongly contended that under Section 198 of the Code, the court is barred from taking cognizance of offence under Section 494 IPC, except on a complaint filed by the aggrieved person, who can only be the spouse. According to him, as per proviso (c) to Sub-clause (1) of Section 198 of the Code, if the person aggrieved by the offence under Section 494 IPC is the wife, a son can file a complaint only 'on her behalf and not on his own behalf.

4. But, second respondent-son filed the complaint in his individual capacity and not on behalf of his mother. No authorisation or power of attorney was produced by him authorising him to file the complaint. Nothing is mentioned in the complaint showing that the complaint is filed on behalf of the mother. Therefore, the contention is that the complaint is filed contrary to the provision contained in Section 198(1)(c) of the Code and hence taking of cognizance is illegal.

5. To understand and appreciate the merit of the contentions raised on behalf of the petitioner, a reading of Section 198 of the Code is absolutely necessary. The relevant clauses in the provision alone are extracted as hereunder:

Section 198: Prosecutions for offences against marriages.--

(1) No Court shall take cognizance of an offence punishable under Chapter XX of the Indian Penal Code (45 of 1860) except upon a complaint made by some person aggrieved by the offence:

Provided that-

(a) xxx XX xxx(a) xxx XX xxx(c) where the person aggrieved by an offence punishable under Section 494 or Section 495 of the Indian Penal Code (45 of 1860) is the wife, complaint may be made on her behalf by her father, mother, brother, sister, son or daughter or by her father's or mother's brother or sister, or, with the leave of the Court, by any other person related to her by blood, marriage or adoption.

It may appear from a plain reading of Section 198 of the Code that the court cannot take cognizance of offences falling under Chap.XX of IPC, except on a complaint filed by the person aggrieved i.e., either of the spouses. It may also appear that as per proviso (c) to Section 198(1), if the person aggrieved of offence under Section 494 IPC is the wife, certain close relatives stated therein can file a complaint on 'on her behalf, and not on their own behalf.

6. But a closer reading of Section 198(1) of the Code makes it clear that it is not merely the spouses who can file complaint in matrimonial offences. Certain other persons also can file complaints in their individual capacity. Section 198(1) of the Code lays down that 'some person aggrieved' by offences falling under Chap.XX of IPC can file complaints and the court can take cognizance of such offences on such complaint. But, what is meant by the expression 'some person aggrieved'

7. 'Some' means, 'a few' and it can normally be, more than two. This indicates that persons other than the spouses may also be treated as aggrieved persons. The word 'some' in English language is used in similar context to refer to 'certain

members of a group'. So, the expression 'some person' used in Section 198(1) must necessarily refer to persons other than the two spouses. Those are persons who fall within the category of aggrieved persons who are members of such group. Therefore, any person who is a member of the group of 'aggrieved persons' can file complaints for offences falling under Chap.XX of IPC.

8. The general rule in criminal law is that any person, whether aggrieved or not, can set law in motion. Section 198(1) of the Code only carves out an exception to that rule and restricts filing of complaints in matrimonial offences by any person other than those who are aggrieved by such offences. But, that does not mean that the spouses alone are the aggrieved. The section does not create any bar in certain aggrieved persons filing the complaint in matrimonial offences. If spouses alone are intended to be the persons aggrieved, (who can file complaints in offences against marriage) necessarily the expression 'some' in Sub-section (1) to Section 198 of the Code was unnecessary. It was enough if some other expression such as, 'spouses aggrieved', 'either of the persons aggrieved' etc. are used.

9. In my view, the words 'some person aggrieved' appearing in Section 198 of the Code are used to include also, persons other than the spouses. If a complaint is filed in a case involving matrimonial offences by certain class of persons by offences under Chap.XX of IPC, i.e., 'some person aggrieved', there is no bar under Section 198(1) of the Code in taking cognizance of such offences. But, who could be such other persons? Do they include son of the aggrieved wife in an offence under Section 494 IPC

10. It is needless to say that in cases involving certain matrimonial offences, close members of the family can be brought under the group of persons who are aggrieved by such offences. Ordinarily, the grievance against a matrimonial offence is grievance of the entire family and such grievance may not confine to that of the spouses alone. It cannot also be disputed that children in the marriage are the victims of any matrimonial offence. It is their dreams and expectations in life which crumble to dust. It is their wounds that remain ever unhealed for long. Such injury is most natural, genuine and deep.

11. But, curiously enough, the rancor of the children, normally is not against the offender but it is against the offence. Their wrath or rage does not ordinarily, fan the fire of revenge because they may still love the offender though they may loath the offence. Yet, they are the most pained and hurt class of persons. And, absolutely aggrieved. Hence, in that sense, they are the persons who are genuinely aggrieved by the offence. So, nothing can prevent the court from acting upon a complaint which reveals grievance of the children against offence of bigamy.

12. In such circumstances, apart from the aggrieved wife or husband, their son can undoubtedly be treated as a person aggrieved by the offence under Section 494 IPC. He can also file a complaint alleging offence of bigamy, as a person who belongs to the group of 'some person, aggrieved' coming under Section 198(1) of the Code. He can make the complaint on his own behalf, in his individual capacity as a person aggrieved by offence of bigamy. There is no bar in the court taking cognizance of such offence on a complaint filed by him, individually.

13. But, Sri. Alan Pappaly, learned Counsel for petitioner, drew my attention to proviso (c) to Section 198(1) of the Code and contended that when the wife is aggrieved by offence under Section 494 IPC, complaint can be made by the son only 'on her behalf. It is argued that a son can file the complaint only as a person 'representing' the aggrieved mother and not in his individual capacity. According to him, 'on behalf of' means as a representative of a person. To represent a person, a written authority is required. Though going by the language of proviso (c) to Section 198(1), this argument may appear to be attractive on a first blush. I can only reject the same, on a deeper study of the matter.

14. It is true that as per proviso (c) to Section 198(1) of the Code, a son may file a complaint in an offence under Section 494 IPC 'on behalf of the aggrieved wife. But, that does not mean that the son cannot independently file a complaint as a person or aggrieved of the offence of bigamy. I have already held, for various reasons, that a son can file complaint on his behalf, under Section 198(1) of the Code. Section 198(1) permits this. At the same time, nothing in Section 198 of the Code bars filing of such complaint by the son who is aggrieved by offence under

Section 494 which falls under Chapter XX of IPC.

15. In the above circumstances, what is contained in proviso (c) to Section 98(1) can be treated only as a provision enabling the aggrieved wife to file a complaint through her close relatives, including the son, if she may choose to do so. In this context, it is worthy to look into the objects and reasons for the legislature to make amendment to Section 198 of the Code. While bringing in certain amendment to Section 198(1)(c) (vide the amendment inserted by Act 45 of 1978), it is mentioned in the 'objects and reasons' thus: 'Section 198 is being amended to provide that a complaint of an offence of bigamy may be filed also by any other person related to the wife by blood, marriage or adoption, after obtaining leave of Court. This is intended to afford the much needed help to the aggrieved woman in such case'.

16. The legislature appears to have intended, as per the relevant proviso to Section 198(1) of the Code, to enable the aggrieved wife to make a complaint in cases of bigamy, through some of her close relatives. May be, legislature was taking care of predicament of an aggrieved woman who will have to otherwise face her husband with a stranger woman in the dock, which may not be a pleasant scene for any woman to watch. The legislature must have intended that no woman shall hold herself back and avoid filing of a genuine complaint, to flee from any such embarrassment or difficulties.

17. Thus, the provision contained in proviso (c) to Section 198(1) is designed to aid a woman, and not to restrict the son or some other person aggrieved by the offence in filing the complaint on their own. It cannot be said that the right conferred by Section 198(1) to 'some person aggrieved' (which includes the son also) is taken away by a proviso to the same section. A contrary view may be possible, only if (as in the case of offence under Section 497 or 498 IPC), there is an express bar under any provision, prohibiting the son or other aggrieved persons from filing the complaint on their own behalf (vide also Section 198(2)).

18. In this back ground, I shall try to interpret the meaning of the expression, 'on her behalf in proviso (c) to Section 198(1). As per dictionary, the expression, 'on behalf of means, 'instead of, 'in the place of or 'representing another'. Keeping in mind, the scope of Section 198(1), which does not restrict filing of a complaint by

'some person aggrieved' by matrimonial offences, which according to me includes son also, I find that the expression 'on her behalf used in proviso (c) to Section 198(1) would only mean, 'instead of or 'in the place of.

19. It only means that in case the aggrieved wife chooses her son or daughter or other close relative to file a complaint in offence under Section 494 IPC, they may do so, 'in her place' or 'instead of her. If she finds any difficulty to prosecute her husband and his second wife by herself, this provision comes to her rescue. If any of her near relatives are reluctant to file a complaint, she can also request any one of the persons stated in the above provision to move the court, on her behalf. Thus, if the son files a complaint for offence under Section 494 IPC, at her request, he can file the same, 'in the place of or 'instead of the aggrieved mother/wife and not as her representative under any written authority.

20. Since a son can file a complaint independently, on his own behalf, it is not necessary for him to file any authorisation from his aggrieved mother, while filing a complaint on her behalf ie., the place of his mother. He need not also necessarily mention in the complaint that he is filing the complaint on her behalf. That may be the reason why legislature did not specify in the section itself that a written authorisation must be produced when the close relatives file a complaint for offence under Section 494 IPC. Had the legislature intended that an authorisation in writing must accompany the complaint, it would have been mentioned in the provision itself.

21. It is relevant to note that in proviso (b) to Section 198(1) (read with Sub-clause (4) to Section 198), a reference is made to a written and signed authorisation when complaints are filed on behalf of an aggrieved husband, under certain circumstances. So, if the legislature actually decided to insist for a written authorisation for the son to file a complaint for offence under Section 494 IPC, there was no difficulty to state so, in the provision itself. But, that was not done. The omission does not appear to be merely accidental. If a son can file a complaint for offence under Section 494 IPC in his individual capacity itself. Why should he require an authorisation, when he files a complaint on behalf of his mother

22. Another fact also is relevant in the context. As per proviso (c) to Section 198(1) of the Code, two categories of persons can make a complaint, if the person aggrieved by the offence punishable under Section 494 or 495 IPC is the wife. The persons in the first category consists of father, mother, brother, sister, son or daughter or father's or mother's brother or sister of the victim wife. The second category is any person who is related to the aggrieved wife by blood, marriage or adoption. The persons in the first category are evidently, closer to the aggrieved wife than those in the second category.

23. But, the first category of persons alone are allowed to file complaints 'on behalf of the aggrieved wife. Those in the second category can file a complaint only with leave of court. If the arguments of learned Counsel for petitioner is accepted, persons who are more closely related to the aggrieved wife would require written authorisation from the wife to file complaint whereas, persons in the second category who may be more distantly related to her may not need this. The latter category can file a complaint even without any written authorisation from the aggrieved wife. The legislature would not have intended such anomaly.

24. Therefore. I think it only reasonable to hold that a written authorisation from the wife is not necessary for the son to file a complaint on behalf of his mother. Legislature only designed a provision by Section 198(1) proviso (c) to enable the aggrieved wife to make any of her close relative to file complaint in her place. No written authorisation is made essential by the provision. So, what the legislature thoughtfully avoided, the court shall not insist.

25. Now coming to the facts of this case, I find from the allegations in the complaint that the second respondent-son himself was aggrieved by the act of bigamy. He has narrated in detail, his personal grievances because of the second marriage of his father. It is clear that he himself is aggrieved and this is in addition to the personal grievances of his mother. The allegations in the complaint also, prima facie, constitute offence under Section 494 IPC. Therefore, on the facts of this case, no authorisation from the aggrieved wife is required. It is not necessary also to mention in the complaint that the complaint is filed on behalf of his mother, even if it is filed at her request. 'On behalf of the mother' would mean that 'instead

of the mother' or 'in her place'. That apart, son is entitled to file a complaint even on his own behalf. Hence, there is no ground to interfere. Let the prosecution continue.

This petition is dismissed.

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